APPEAL NO. 020714
FILED APRIL 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 22, 2002. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability because there was no compensable injury. The claimant appealed, disputing the determinations made by the hearing officer. The respondent (carrier) replies, contending that the determinations of the hearing officer are supported by the evidence.

DECISION

Affirmed.

The claimant testified that he was injured during the course and scope of his employment when he slipped and fell on _____, injuring his low back and left leg. Medical records in evidence reflect that the claimant went to the doctor on April 6, 2001, complaining of pain in his left leg, which was diagnosed as a pulled hamstring muscle. The records further reflect that the April 17, 2001, appointment with the doctor was a follow-up of the April 6, 2001, appointment.

The claimant attached evidence to his appeal that was not offered at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence would need to have come to appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to his knowledge no sooner; it must not be cumulative; and it must be so material it would probably produce a different result upon a new hearing. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer made findings of fact and concluded that the claimant did not sustain a compensable injury on _____, and that he therefore did not have disability. Without a compensable injury, the claimant can not have disability, as defined by Section 401.011(16). The claimant had the burden to prove that he was injured in the course and scope of his employment and that he had disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An appellate-level

body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact. Appeal No. 950084. We conclude that the challenged findings are supported by sufficient evidence and not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

C.T. CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge